



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 24, 1995

Honorable John Whitmire
Chair
Criminal Justice Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 95-026

Re: Whether the widow of a retired
City of Houston employee is entitled to
death benefits under article 6243g,
V.T.C.S. (ID# 32395)

Dear Senator Whitmire:

You ask whether the widow of a retired City of Houston ("city") employee, who was a member of the Houston Municipal Employees Pension System (the "pension system"), is entitled to death benefits under article 6243g, V.T.C.S. You state that the employee retired from the city in December 1978 and did not marry the woman who is now his widow until April 1985, several years after his retirement. He died in April 1990.

Information submitted with your request states that the pension system is governed by article 6243g and that the employee at issue was a "Group A" member under that article. Section 13 of article 6243g provides in pertinent part:

If any Group A member of the Pension System . . . shall die . . . and shall leave a surviving widow or widower, or a child or children under the age of eighteen (18) years, or both such widow or widower, or a child or children, said Board shall order paid monthly allowances as follows:

(a) To the widow or widower, *provided she or he shall have married such member prior to her or his retirement*, a sum equal to one-half (1/2) of the retirement benefits that the deceased Group A member would have been entitled to had she or he been totally disabled at the time of her or his retirement or death, but the allowance payable to any such widow or widower shall not in any event be less than Fifty Dollars (\$50) a month.

V.T.C.S. art. 6243g, § 13(a) (emphasis added). It is clear from the italicized language that a widow who married a member of the pension system *after* his retirement is not eligible to receive the widow/widower allowance set forth in section 13(a). Nor are we aware of

any other provision in article 6243g or elsewhere which would entitle such a widow to death benefits.¹

S U M M A R Y

A widow who married a member of the Houston Municipal Employees Pension System *after* his retirement from the City of Houston is not eligible to receive the widow/widower allowance set forth in section 13(a) of article 6243g, V.T.C.S.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

¹We note that death benefits which by definition vest upon the death of the member under a statutory pension plan are not the community property of any marriage and may be controlled by the legislature. See, e.g., *Duckett v. Board of Trustees*, 832 S.W.2d 438 (Tex. App.—Houston [1st Dist.] 1992, writ denied); *Lack v. Lack*, 584 S.W.2d 896, 899 (Tex. Civ. App.—Dallas 1979, writ ref'd n.r.e.) ("Since the right to death benefits can never be established until the death of the participant, such benefits are not property acquired during the marriage, and, therefore, are not community property[;] [t]he legislature's control over these benefits was approved in *City of Dallas v. Trammell*, 101 S.W.2d 1009, 1013 (1937)").